

Hon. Robert Brutinel, Chair
Committee on the Impact of Wireless Mobile Technologies
and Social Media on Court Proceedings
1501 W. Washington St., Suite 410
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULE 47(a)(3),)	
ARIZONA RULES OF CIVIL)	Supreme Court No. R-13-_____
PROCEDURE, AND RULE 18.6(b),)	
ARIZONA RULES OF CRIMINAL)	
PROCEDURE)	
)	
_____)	

Petitioner respectfully petitions this Court to amend Rule 47(a)(3) of the Arizona Rules of Civil Procedure, and Rule 18.6(b) of the Arizona Rules of Criminal Procedure. These two rules contain the jurors' oath. The text of the proposed amendments is in the Appendix.

I. Background. Petitioner is the Chair of the Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings (the "Wireless Committee"), which was established by Administrative Order 2012-22. The Wireless Committee presented its report and recommendations to the Arizona

Judicial Council (“AJC”) on December 13, 2012; the AJC approved the Wireless Committee’s request to file a petition proposing amendments to these two rules.

Administrative Order 2012-22 recognized the “unprecedented growth” in the number of hand-held smart devices, laptops, and tablets. The Order described how these mobile and wireless devices “may be accessed nearly anywhere and anytime for email, phone and video calls, text messages, internet browsing, taking pictures and videos, research, blogging, and posting to social media sites.” The Order established the Wireless Committee to address issues arising from use of this advanced technology during court proceedings.

Trial jurors are among the individuals with access to the new technology. The Wireless Committee learned that a number of appeals have been taken from jury verdicts nationwide, including Arizona appeals, challenging juror misuse of technology. As more jurors acquire new technology, the number of these challenges grows. Improper use of new technology by a juror could result in a mistrial, and could cost the court and litigants a substantial amount of time and money. The Wireless Committee concluded that effective admonitions are the most efficient way to prevent that misuse and to avoid those costs.

Judges have a trio of admonitions, including RAJI (“Recommended Arizona Jury Instruction”) Preliminary Civil 9, RAJI Preliminary Criminal 13, and a third admonition found in the judges’ Bench Book. The criminal admonition mentions

Facebook, but none of the admonitions caution jurors about “friending” the judge, court staff, attorneys, parties, witnesses, or other jurors. The Wireless Committee drafted a revised jury admonition to address this omission. Its revised jury admonition includes other updates that acknowledge the capabilities of the new technology. In addition, the revised admonition provides several cogent explanations about why jurors must not conduct their own research, or communicate with others, about anything concerning the case. These new explanations encompass research and communications in traditional contexts, such as voice conversations and television, as well as contexts and concepts that arise from the new technology, such as internet research, blogging, and text messaging. The revised version also reduces legal terminology in the admonition, and uses simpler words with less complex sentence structure, so that citizens who typically serve on juries can more readily understand it.

The Wireless Committee submitted its revised admonition to the State Bar for its consideration in future RAJIs, and provided it to the Judicial College of Arizona for possible inclusion in the Bench Book. Although the current civil and criminal admonitions are different, the Wireless Committee found no justification for any significant distinction, and it proposed a virtually identical admonition for use in both case types.

A juror consultant suggested to the Wireless Committee that jurors sign a written pledge to underscore that they must follow the admonition. The Wireless Committee recommended, instead of a written pledge, that the oath taken by jurors include the four words, “comply with the admonition.” While jurors agree in the current oath to “abide by the court’s instructions,” adding the phrase “comply with the admonition” will provide a concrete link to this separately titled and distinctive instruction known, and repeatedly referred to, as “the admonition.” Jurors’ recitation of the words “comply with the admonition” will emphasize to them the importance of abiding by the admonition, notwithstanding the ubiquitous availability of technology and other available means that may tempt a juror to not comply.

II. Content of the proposed rule. The criminal oath served as the model for the Wireless Committee’s proposed oath. The proposed oath adds the four words, “comply with the admonition.” The Wireless Committee’s proposed oath makes an additional change to the criminal oath, which clarifies that the words “so help you God,” are not given if a juror takes an affirmation rather than an oath. The oath as provided in the proposed civil rule is identical with the oath in the proposed criminal rule.

III. Comments. Petitioner solicited comments on this rule change from a variety of stakeholders, including the Committee on Limited Jurisdiction Courts,

the Committee on Superior Court, and the Limited Jurisdiction Court Administrators Association, as well as during a quarterly conference of the Presiding Judges. During the drafting process, Petitioner also received informal comments from judges statewide.

IV. Conclusion. Petitioner requests the adoption of these two amended rules concerning the jurors' oath.

RESPECTFULLY SUBMITTED this 9th day of January 2013.

By _____
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Appendix

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Arizona Rules of Civil Procedure:

Rule 47(a). Trial Jury Procedure; List; Striking; Oath

1. [No change]

2. [No change]

3. After the jury is completed, the clerk shall make a list thereof and deliver it to the parties for peremptory challenges. The parties shall exercise their challenges by alternate strikes, beginning with the plaintiff, until the peremptory challenges are exhausted. Failure of a party to exercise a challenge in turn shall operate as a waiver of remaining challenges but shall not deprive the other party of that other party's full number of challenges. The list shall then be delivered to the clerk who shall call the first eight names remaining on the list who shall constitute the trial jury, and to whom an oath or affirmation shall then be administered in substance as follows: ~~“You do solemnly swear (or affirm) that you will well and truly try the issues now on trial and a true verdict render according to the law and the evidence, so help you God.”~~ “Do you swear (or affirm) that you will give careful attention to the proceedings, abide by the court's instructions, comply with the admonition, and render a verdict in accordance with the law and evidence presented to you, so help you God?” If a juror affirms, the clause “so help you God” shall be omitted.

4. [No change]

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Arizona Rules of Criminal Procedure:

Rule 18.6. Preparation of jurors

a. [No change]

b. Oath. Each juror shall take the following oath:

Do you swear (or affirm) that you will give careful attention to the proceedings, abide by the court's instructions, comply with the admonition, and render a verdict

in accordance with the law and evidence presented to you (~~so help you God~~), so help you God?

If a juror affirms, the clause “so help you God” shall be omitted.

c. – f. [No change]